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ALEXANDER L. STEVAS,
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No. 83-384

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

CLARE BENEDICT HUDENBURG

Petitioner,

v.

GEORGE F. NEFF, INDEPENDENT EXECUTOR OF THE ESTATE OF ANNETTE GANO LUMMIS, AVIS HUGHES McINTYRE, AND NORTON BOND, EXECUTOR OF THE ESTATE OF RUSH HUGHES,

Respondents.

On Petition for Writ of Certiorari To The
Court of Appeals for the
Fourteenth Supreme Judicial District of Texas

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The respondent George F. Neff, Administrator of the Estate of Annette Gano Lummis, Deceased, respectfully prays that this Court deny the Petition for Writ of Certiorari seeking review of the judgment and opinion of the Court of Appeals for the Fourteenth Supreme Judicial District of Texas entered in this action on December 9, 1982.

QUESTIONS PRESENTED

Whether the Texas courts in this case decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

Whether the Texas courts in this case decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

STATEMENT OF THE CASE

This is an heirship case. The decedent, Howard R. Hughes, Jr., died on April 5, 1976. Petitioner Hudenburg filed a claim alleging to be an illegitimate daughter of Mr. Hughes. As the record quoted by Petitioner makes clear, the issue was set for trial for July 13, 1981, more than 5 years after Mr. Hughes's death. At the June 26, 1981 Pre-Trial Conference, which all parties were required to attend, the court and all parties agreed to hear summary judgment motions on July 13, 1981, prior to the start of trial. Petitioner Hudenburg appeared through counsel on

July 13, 1981 for the summary judgment and trial proceedings. Even though her counsel arrived late, the proceedings were reopened to accommodate Petitioner. Petitioner's counsel did not complain of lack of notice or lack of time to prepare. Counsel was prepared and presented two written dilatory motions, supported by an affidavit, a telegram and an exhibit. These motions were denied. On the day of trial Petitioner still failed to produce any evidence of heirship, such as an acknowledgement of paternity, a judgment of paternity or a certificate of marriage between her natural mother and Mr. Hughes. Nor did Petitioner state by affidavit reasons why such evidence was not forthcoming.

Reasons The Writ Should Not Be Granted.

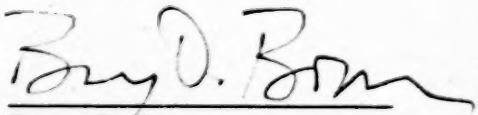
In her petition before this Court, Hudenburg still does not allege the existence of any proof of heirship. Petitioner's copious reference to the record below serves only to demonstrate that the trial court and the parties gave careful consideration to the due process rights of Petitioner. She was noticed, filed her claim, appeared

through counsel in court at the summary judgment hearing and never alleged lack of notice or opportunity to prepare or be heard. The only abuse of process herein is the continued prosecution of this frivolous claim.

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in the Supreme Court of the United States, and respondent Neff prays that the petition for Writ of Certiorari be denied.

Respectfully submitted,



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Deceased

PROOF OF SERVICE

Berry D. Bowen, Andrews & Kurth, deposes and states that pursuant to Rule 28.3 of this Court he served this Brief in Opposition to Writ of Certiorari on the Petitioner by enclosing three copies of each thereof in an envelope, certified mail, return receipt requested, addressed to:

Brantley Harris, Esq.
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3050 South Post Oak Road
Houston, Texas 77056

and depositing the same in the United States mails at Houston, Texas on the 7th day of October, 1983.

BERRY D. BOWEN